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Time to reflect

New Director General

We would like to announce that Mr. Terry de March has been appointed the new Director General of the Charities Directorate.

Mr. de March joined the Canada Revenue Agency (CRA) in 2003 as the Director of the Policy, Planning and Legislation Division, Charities Directorate. Prior to joining the CRA, he worked for five years with the federal Department of Justice as the Director of Innovation, Analysis and Integration, where he was responsible for a number of departmental grants and contribution programs, including the National Public Legal Education and Information Program. While at the Department of Justice, Mr. de March participated as a member of the initial Government/Voluntary Sector Roundtable for Regulatory Reform leading to the "Working Together" report to government. He was also a member of the most recent joint roundtable on regulatory reform, whose work culminated in the most significant changes to the regulatory regime for charities in over 20 years.

Prior to his term with the Department of Justice, Mr. de March spent many years in the policy and regulatory world of government, working, for the most part, on the ongoing development of the Canada Pension Plan and Old Age Security Pension programs. In addition, for five years, he was the Administrator of Appeals for both of those income security programs.

The CRA's Charities Directorate is pleased to welcome Mr. Terry de March as its new Director General.

Canada Revenue Agency | Agence du revenu du Canada

Canada

40th anniversary of the registration of charities

In 1967 an amendment to the *Income Tax Act* (the Act) introduced the concept of charities having to register and file annual information returns.

Although deductions for charitable giving were first introduced in the *Income War Tax Act* of 1930, there was no formal process for registering charities with the Department of National Revenue before 1967.

With no formal registration process in place, and with limited staff, it was very difficult for the government to verify the donation claims that individuals submitted with their annual income tax returns. With the discovery of several cases of fraudulent receipting in the early 1960s, it became apparent that the Department faced significant accountability issues in connection with charitable donations and that it would need to act.

Effective January 1, 1967, the *Income Tax Act* was amended to require charities issuing donation receipts to register and file annual returns with the Department. In 1967, the Charities Section registered a total of 22,556 organizations.

As the number of registered charities has grown, so too has the organization that regulates them. Prior to 1967, the Charities Section of Revenue Canada had only two or three employees serving the entire charitable sector. In contrast, today's Charities Directorate has 223 employees, spanning 6 divisions.

From initial registration to the administration of regulations and policy, to ongoing education, monitoring, and audits, the Charities Directorate works diligently to ensure that Canadian registered charities are well served, and that Canadians are served well by their charities.

The Charities Directorate recognizes the important role it plays in preserving the integrity of the charitable sector. After all, when Canadians have confidence in what charities can accomplish, they give generously and the whole of Canadian society benefits as a result.

Important note

Electronic mailing list (EML)

We encourage all officers, directors, and employees of registered charities to subscribe to the *Charities – What's New* electronic mailing list (EML). What is the EML? *The Charities – What's New* EML is a free service that notifies you by email when new information is added to the Charities Directorate Web site "Charities and Giving."

About twice a month, we will let you know what's new on such topics as:

- new policy statements and commentaries;
- draft guidelines for consultation;
- new calls for proposals for the Charities Partnership and Outreach Program;
- various outreach activities;
- the Charities Newsletter; and
- other substantial changes.

At times, we may send you more than two emails in a month to ensure you get time-sensitive information quickly.

The EML is becoming a vital outreach tool for the Charities Directorate because 2007 was the last year information and invitations for the Charities Roadshows (now re-named Charities Information Sessions) were sent by regular mail. Starting in 2008, all information about the Charities Information Sessions will be available through the Web site or by calling our **toll-free number**.

To subscribe to the electronic mailing list, visit **www.cra.gc.ca/eservices/maillist/subscribecharities-e.html** and follow the two easy steps.

The CRA takes your privacy seriously. Any and all information that you provide when you sign up for this electronic mailing list will remain completely confidential. Our lists will not be shared with any other organization. For further information, we invite you to read our statement on privacy protection at **www.cra.gc.ca/eservices/maillist/privacy-e.html**.

Various other CRA electronic mailing lists are also available. To learn about the other electronic mailing lists and to subscribe to them, visit **www.cra.gc.ca/eservices/maillist/subscribe-e.html**.

Guide T4033, *Completing the Registered Charity Information Return*

Effective January 2009, the Charities Directorate will discontinue the annual mail-out of Guide T4033, *Completing the Registered Charity Information Return*, to all registered charities. However, the CRA's Charities and Giving Web site at **www.cra.gc.ca/charities** will continue to offer the electronic version of Guide T4033, and many other forms and publications.

The CRA's decision to discontinue the annual mail-out of Guide T4033, Completing the *Registered Charity Information Return*, is based on the following factors:

- Eliminating the mail-out of the guide will save over 1.5 million pieces of paper each year, significantly contributing to the CRA's sustainable development practices. Charities are also encouraged to use environmentally conscious practices by only printing the pages they need from the 30-page guide.
- An electronic version of the guide is easy to update and amend. Since most charities have a computer available, they have easy access to the electronic format of the guide. Charities that have registered for our electronic mailing list will be notified by email about changes to the guide.
- Discontinuing the general distribution of the paper version of the guide will reduce printing and mailing costs.

The CRA recognizes that a number of charities do not have a high-speed Internet connection. This is one reason why most of our guides are available in both PDF and HTML formats.

Documents in HTML format are Web-based, load faster than those in PDF, and are more convenient to navigate online. Charities can access Guide T4033 in HTML format, click on the sections of relevance to them, and print those individual sections relatively quickly.

The T3010A, *Registered Charity Information Return*, and schedules will continue to be printed and mailed out as usual. Registered charities that do not have access to the Internet and require a paper copy of the guide, or that need assistance finding and working with the online version, can call our **toll-free number**.

Charities Information Sessions (previously known as Roadshows)

Charities Information Sessions provide key information on different topics relating to charities, as well as important features of being a registered charity. Among other subjects, the following topics are covered every year:

- gifting and receipting;
- disbursement quota (DQ); and
- other basic requirements to maintain registered status.

The main thrust of the sessions is to ensure that charities are aware of their legal obligations and know where to find the information they require to meet those obligations.

The Charities Information Sessions are designed to provide charities with an opportunity to meet face-to-face with Charities Directorate personnel, to share information with colleagues, and to learn about charities' legal obligations. They give you an opportunity to ask questions about issues without feeling threatened or pressured. If you have yet to attend a Charities Information Session, you may want to make a point of attending one this year. In some of the sessions, a provincial government representative will make a short presentation and answer questions about provincial requirements.

Topics selected for the 2008 sessions are based on evaluations received from participants at the 2007 sessions, frequently asked questions from our Client Service telephone and correspondence enquiries, and compliance issues identified during audits.

If you want to attend one of the free sessions, you will need to register online. If you or others you know do not have access to the Internet, **contact us** and we will be pleased to process your registration for a Charities Information Session.

You can also invite us to speak at your organization's annual meeting, conference, training sessions, or other types of meetings of groups of 40 or more participants. **Contact us** to obtain additional details. Though we cannot accept all invitations, we will try to attend as many as possible.

We are always looking for charities to host our Charities Information Sessions. If you would like to participate in 2009, please contact the Charities Information Session Coordinator by email at **Information.Sessions@cra-arc.gc.ca** or through our **toll-free number**. Stay tuned for more information on Charities Information Sessions coming by the end of March.

What's new?

Court news

A.Y.S.A. Amateur Youth Soccer Association

The Supreme Court of Canada recently dismissed the appeal of A.Y.S.A. Amateur Youth Soccer Association.

A.Y.S.A. is an organization established to promote youth soccer in local communities in Ontario. It applied to the CRA for registration as a charity and was refused on the basis that the promotion of sport is not a recognized charitable purpose.

A.Y.S.A. appealed the CRA's refusal to the Federal Court of Appeal. It argued that the promotion of sport should fall within the already recognized category of charitable purpose, the "promotion of health," given that soccer promotes the health and physical fitness of the participants.

In its decision, the Federal Court of Appeal declined to address the issue of whether the promotion of sport is charitable. Instead, it found that Parliament had already put its mind to the tax treatment of amateur sports. In 1972, the *Income Tax Act* was amended to give registered Canadian amateur athletic associations (RCAAAs) tax privileges similar to those granted to registered charities, but only where they operated on a nation-wide basis. Although it could have, Parliament did not include organizations promoting athletics on a local, regional, or provincial basis. Consequently, the court decided that Parliament must be taken to have "occupied the field" with respect to the tax treatment of amateur sports associations, regardless of their treatment within the common law. The court therefore held that the Minister was correct in refusing the registration of A.Y.S.A. as a charity.

A.Y.S.A. appealed the Federal Court decision to the Supreme Court of Canada. The Supreme Court rendered its decision on October 5, 2007, unanimously dismissing A.Y.S.A.'s appeal. Eight of the nine judges concurred in their reasons, while the other arrived at the same result for different reasons.

The majority of the Court held that the evidence did not establish that Parliament's decision to provide tax benefits to RCAAAs in 1972 was intended to preclude sports organizations from applying for charitable registration under the Act. That said, the Court held that the promotion of sport is not a charitable purpose for the following reasons:

- the trend of cases has not recognized the promotion of sport, in and of itself, as charitable;
- a wide extension to recognize as charitable all sport organizations would not maintain the distinction between charities and other non-profit organizations under the Act; and
- since 21% of all non-profits in Canada are sports or recreation organizations, a judicial expansion would constitute "wholesale reform" rather than incremental change.

The Court confirmed that sport, if ancillary to another recognized charitable purpose, could be charitable and, by way of example, accepted the CRA's position that organizations providing therapeutic horseback riding for children with disabilities or sports camps for children living in poverty are charitable.

The decision confirms that sport is not a charitable purpose in and of itself. In addition, for the second time in eight years, the Supreme Court expressed its reluctance to expand common law charitable purposes where such an expansion would not be incremental. It stated that this is a decision that should be left to Parliament.

International Charity Association Network (ICAN)

On January 3, 2008, the Tax Court of Canada dismissed the application of the International Charity Association Network (ICAN) for postponement of suspension of its authority to issue official tax receipts for a one-year period beginning on November 28, 2007.

In making its decision, the Tax Court of Canada determined in accordance with the test set up by subsection 188.2(5) of the *Income Tax Act* that it was not "just and equitable" to grant ICAN's application for postponement of the suspension to issue official tax receipts, finding that "ICAN [had] not met the burden of proof incumbent on it to demonstrate irreparable harm on its side."

The vast majority of the more than 83,000 Canadian registered charities comply with the requirements of the Act. When a registered charity is found not to be complying with the requirements of that Act, the CRA may take action to protect the public interest and ensure the integrity of the charitable sector.

For more information on this decision, please consult the Tax Court of Canada Web site at **http://decision.tcc-cci.gc.ca/en/2008/2008tcc3/2008tcc3.html**.

Public education initiative update

The CRA's public education initiative to increase awareness about giving wisely has now been active for more than a year. Our activities may affect you as a registered charity, so it is important that you are aware of them.

Since January 2007, we have participated in trade shows in all 10 provinces and distributed over 20,000 copies of our leaflet RC4407, *Giving to Charity: Information for Donors*.

We also published notices in newspapers across the country in February 2007, and again in November and December 2007, to share tips on avoiding charity fraud and to invite donors to visit the CRA Web site. A direct mail campaign to 400,000 Canadian households in early November also delivered these key messages.

Overall, the feedback we have received confirms that the public has a strong interest in learning more about registered charities and how to donate safely. We suggest to donors that if they have questions about a charity, they should call that charity directly. Also, we are inviting donors, before making a donation, to do more research and review the charity's Form T3010A, *Registered Charity Information Return*, which is posted on our Web site. Therefore, as a registered charity, it is important that your return is complete, accurate, and well presented.

What can you do to support the CRA's public education initiative?

- **Include a link** to the donor section of the CRA Web site or include our Web site address in your published materials: **www.cra.gc.ca/donors**
- **Remember that your annual information return (Form T3010A) is an excellent marketing tool** for your registered charity. Filling the return out clearly and completely will make it easier for donors to understand your charity's activities and finances.
- **Include the CRA's informational materials in your charity's mail-outs**. You can download leaflet RC4407, *Giving to Charity: Information for Donors*, or fill out an online form to order printed copies at **www.cra.gc.ca/E/pub/xi/rc4407/**.

We all want donors to feel confident about supporting registered charities in Canada. If you have any questions about the CRA's public education initiative, please **contact us**.

Education

Tax shelter gifting arrangements

Taxpayers will be denied tax benefits if they participate in tax shelter arrangements that do not have a tax shelter identification number. However, a **tax shelter number** is used for **identification purposes only** and does not mean that the tax shelter transactions have been approved by the CRA as being legitimate. It enables the CRA to identify all tax shelters and their investors but offers **no guarantee** that taxpayers will receive the proposed tax benefits. Tax shelter promoters must include a statement to this effect on the tax shelter documents. The CRA reviews all tax shelters to ensure that the tax benefits being claimed meet the requirements of the *Income Tax Act*.

There are three common types of abusive tax shelter arrangements involving charities, although variations of these and other new arrangements are being promoted. Examples of the three common arrangements are:

- **Buy low, donate high**: an individual buys property for $3,000, then transfers the property to a charity and receives a $10,000 receipt.
- **Gifting trust arrangements**: an individual pays $3,000 cash to a charity, receives property from a trust with a purported fair market value of $7,000 which is also transferred to a charity, and receives a donation receipt of $10,000.
- **Leveraged cash donations**: an individual purportedly borrows $8,000, adds another $2,000, and transfers $10,000 to a charity for a $10,000 receipt. The individual then pays another $1,000 to a third party to repay the loan in full.

New arrangements are being marketed that claim to be different from those for which the CRA has previously issued warnings. Taxpayers should be wary of all arrangements that promise a donation receipt in excess of the cash payment. It is the CRA's position that the proposed legislation, effective since 2003, will apply to reduce the donation credit to no more than the actual cash payment. Furthermore, completed audits have shown that, in many cases, there was effectively **no gift** being made and, as a result, donations in those cases were reduced to zero.

To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about $1.4 billion in donations claimed. Another 20,000 taxpayers, involving $550 million in donation claims, are about to be reassessed. Audits on other arrangements involving over 50,000 taxpayers are also beginning.

The CRA continues to warn taxpayers about tax shelter gifting arrangements, which have been considered to be abusive. The CRA is urging taxpayers to avoid these schemes. To view the many warnings, visit **www.cra.gc.ca/tax/charities/donors/alert/2-e.html**.

Registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties. Further, any person, promoter, tax professional, or other third party who is closely involved with the development of an abusive or fraudulent tax shelter arrangement may be liable to penalties regarding false or misleading information, or omission of or inappropriate use of the tax shelter identification number.

For more information on this topic, see the CRA Web site at **www.cra.gc.ca/tax/business/topics/taxshelters/menu-e.html**.

Charities and GST/HST

Questions from charities about GST/HST are quite common in the Charities Directorate. The best source of information on this topic is the CRA Web site at **www.cra.gc.ca/tax/business/topics/gst/menu-e.html**.

Issue number 62 of the CRA's publication *Excise and GST/HST News* presented a very informative article entitled, "Charities and GST/HST." The information provided assists charities in understanding how these taxes are administered, and who to contact for additional GST/HST information. You can find this issue at **www.cra.gc.ca/E/pub/gr/news62/README.html**.

Valuating donations

Fair market value (FMV) is not defined in the *Income Tax Act*. The FMV is generally the highest price, expressed in a dollar amount, that the property would bring in an open and unrestricted market between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

A charity must be able to determine the FMV of any non-cash gift on the day that the gift is donated to the charity. The onus is on the charity to reflect the true FMV of gifts on all receipts. If the charity cannot reasonably determine the FMV of a gift, then an official donation receipt cannot be issued.

If the FMV of an item can be otherwise determined, a third-party appraisal is not required. For example, a donation of new items such as a new car, or new golf clubs, would not require an appraiser as the FMV could easily be obtained and supported by a bill of sale or a listed price. Generally, if the fair market value of an item is less than $1,000, and a person with sufficient knowledge of the item can determine its value, the services of a third-party appraiser would not be required. However, if the fair market value is expected to be more than $1,000, the Charities Directorate strongly recommends that the property be independently appraised by a third party who is qualified to evaluate the particular property being transferred by way of a gift.

Gifts of property are now subject to the new deemed fair market value (deemed FMV) rule, which generally applies to any property donated within three years of acquisition or acquired through a gifting arrangement.

The deemed FMV is the lesser of the actual FMV or the donor's cost to acquire the property, or in the case of capital property, the adjusted cost base, with the following exceptions:

- Gifts made as a consequence of a taxpayer's death
- Inventory
- Real property situated in Canada
- Certified cultural property
- Gifts of certain publicly traded securities
- Ecological gifts

The FMV of an item does not include taxes paid on purchasing the item. For example, a donor purchases an item from a store, pays sales tax and GST on the transaction, and then subsequently donates the item to a registered charity. The amount entered on the official donation receipt is the FMV of the item before taxes. If you need more information, call our **toll-free number** or refer to the CRA Web site at **www.cra.gc.ca/tax/charities/policy/csp/csp-f02-e.html**.

Helpful hints

Tips for completing your annual information return

In this edition of the Newsletter, we are introducing a new section that will provide charities with some helpful hints for completing specific areas of Form T3010A, *Registered Charity Information Return*. In this issue, we focus on charitable program expenditures.

Tip – If the expenditure is essential to the delivery of your charitable program, then it should be reported as a charitable program expenditure.

Charities have continued to express their difficulty in knowing what amount they should enter for charitable program expenditures on line 5000 of their annual information returns.

Distinguishing charitable from administrative activities can be a challenge, and many charities do not realize that certain operating expenses can be charitable if they are used directly in carrying out their charitable programs.

When filling out Form T3010A, you should enter the total of all of your charity's expenditures on line 4950. However, many of these expenditures may also be charitable if they are directly incurred in the operation of your charitable programs, and should also be entered as part of your charitable program expenditures on line 5000.

Some examples of charitable vs. administrative expenditures:

Example 1 – If your charity is a soup kitchen and you pay employees salaries to cook food, serve clients, or maintain the building, then those salaries are reported under line 4880 – Salaries, wages benefits, and honoraria, on the return. However, they are also included in the calculation of charitable program expenditures. After all, the soup kitchen requires those employees in order to operate.

Example 2 – If your charity requires building space to deliver its programs and you use that space exclusively to carry out those programs, then the rent, taxes and utilities are reported under line 4850 *Occupancy costs*. These costs are also included in the calculation of your charitable program expenditures.

If building space is not used exclusively in conducting your charitable programs, then the occupancy costs must be allocated based on usage. For example, if a church rents out its basement to a for-profit daycare centre 5 days a week, but uses the space itself on evenings and weekends, then the basement is not being used exclusively for its charitable activities. The rent, taxes, and utilities associated with the building should be divided between the portion of the building used directly for the charity's programs, and the portion rented out to the daycare. The costs associated with the daycare portion of the building are not included as part of the charity's charitable program expenditures.

Example 3 – If your charity is involved in fundraising, the expenditures allocated to this activity are not considered charitable, and they are not included in the calculation of charitable program expenditures. If, for example, your charity runs a monthly fundraising bingo, all of the costs associated with administering this event, such as space rental, salaries of employees, equipment, and materials, should be included in the calculation of fundraising expenses.

Reporting the right amounts on the correct lines of Form T3010A is crucial to meeting your disbursement quota. You must generally expend at least 80% of your receipted income on your charitable programs. The *Income Tax Act* requires that a registered charity meet its disbursement quota every year.

For more information on filling out Form T3010A, see Guide T4033, *Completing the Registered Charity Information Return*, which is available on our Web site at **www.cra.gc.ca/E/pub/tg/t4033a/README.html** or by calling our **toll-free number**.

Reminder: Do not attach correspondence to Form T3010A

As indicated in Guide T4033A, *Completing the Registered Charity Information Return*, you should not attach any correspondence to your annual information return unless it is essential to the proper completion of the return. You must submit your financial statements with the return.

Due to the number of returns we receive, attached correspondence or letters dealing with matters separate from the return cannot be directed to the appropriate section in a timely manner. This will delay any response you may be expecting from us.

Mail all correspondence not related to the completion of Form T3010A separately to the **Charities Directorate**.

Questions and answers

The following is the first in a series of questions and answers that address some of the most common questions we receive from charities in our Client Service Section. In this issue, we provide information on a charity's fiscal period end, and the requirement to file Form T3010A, Registered Charity Information Return.

Fiscal periods and Form T3010A

Q1. What is a fiscal period?

A1. A fiscal period is generally the 12 months covered by an organization's financial statements. We use the term "generally" in this case, because in certain circumstances a charity may have a fiscal period that is shorter than 12 months. For example, if a charity receives approval to change its fiscal period end, it will have a transitional fiscal period of less than 12 months. A newly registered charity's first fiscal period is also often shorter than 12 months.

Q2. What is a fiscal period end?

A2. A fiscal period **end** is the date on which the period covered by the organization's financial statement ends. A fiscal period **end** is always stated as month and day only (for example, March 31). The year is not included because, unless formally changed, the fiscal period stays the same year after year. For example, if a charity fiscal period covers January 1 to December 31 every year, then December 31 is the charity's fiscal period end.

Q3. When does a charity need to file its T3010A return?

A3. Each registered charity must submit a complete Form T3010A, *Registered Charity Information Return*, to the Canada Revenue Agency within six months of its fiscal period end. A charity that is inactive throughout a given fiscal period must still submit a complete Form T3010A to maintain its registered status. A charity will lose its registration for failing to file its return on time.

Q4. How can a charity change its fiscal period end?

A4. A registered charity must obtain permission from the Charities Directorate before it can change its fiscal period end. To request a change, send a letter with the following information:

- the reason;
- the proposed new fiscal period end; and

- the signature of a Director/Trustee or other authorized representative of the charity.

If the fiscal period end is stated in the charity's governing documents, the charity must also send a copy of its amended governing documents that reflects the change to the fiscal period end.

Please send the request in advance of the proposed fiscal period end to allow us time to respond. Mail or fax the letter to the **Charities Directorate**. Reminder: Do not include the letter with the charity's annual T3010A information return, as this will cause delays.

Contact information

Email your comments or suggestions:

about this newsletter to:
charities-bienfaisance-bulletin@cra-arc.gc.ca

about our draft publications to:
consultation-policy-politique@cra-arc.gc.ca

about our Charities Information Sessions to:
information.sessions@cra-arc.gc.ca

about our Web site to:
charities-bienfaisance@cra-arc.gc.ca

You can find all our publications at:
www.cra.gc.ca/tax/charities/formspubs/menu-e.html

Draft publications for consultation are available at:
www.cra.gc.ca/tax/charities/consultations/menu-e.html

For information on new additions to our Web site, about charities, see the "What's new" page at:
www.cra.gc.ca/tax/charities/whatsnew/menu-e.html

For an email notification of these additions, subscribe to the free electronic mailing list at:
www.cra.gc.ca/eservices/maillist/subscribecharities-e.html

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